IN THE HIGH COURT OF DELHI

Crl.M.C. No.2415/2006

Manmohan Singh Chawla ..... Petitioner
! through: Mr.R.N.Mittal, Sr. Adv. with
Mr.Rajneesh Chopra.
VERSUS

$ The State (GNCT of Delhi) & Anr. ..... Respondents
^ through : Mr. Vijay Kumar Gupta for complainant.
Mr. Anil Soni, Adv. for State.

RESERVED ON: 07.08.2007

% DATE OF DECISION: 13.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. By way of the present petition under Section 439(2) read with Section 482 of the Criminal Procedure Code 1973, petitioner who is the complainant seeks cancellation of the interim bail granted to the accused Rajesh Berry in FIR No.337/2004 dated 8.9.2004 under Section 406/467/409/468/471/420/120-B IPC PS Nabi Karim.

2. Vide order dated 13.7.2005 interim bail was granted to the accused noting that an opportunity needs to be given to the accused to sit across the table and try and settle the

dispute with the complainant. Accused was set free for a period of 6 weeks. Terms were imposed upon the accused.

3. Relevant for the purposes of present decision is the following term which was imposed upon the accused:-

> "It would be a term of the interim bail granted to the petitioner that he would not enter the territory of District Gurgaon and would not contact any teacher, staff or student of Shri Gobind Tricentinary Dental College and Research Institute, Village Godhera, District Gurgaon. Further, petitioner would not act in any manner whatsoever for and on behalf of the College and the Trust "Dashmesh Educational Charitable Trust". Petitioner would not visit Bank of Baroda, Pahar Ganj Branch nor would he contact the Manager or any employee of the bank nor would he contact the witnesses of the prosecution as per list of witnesses filed along with the charge sheet."

4. Vide order dated 1.9.2005 interim bail granted was extended till arguments were heard by the learned Metropolitan Magistrate on the charge-sheet which was filed pertaining to the issue whether charges need to be framed or not.

5. Unfortunately, arguments have not been heard by the learned Metropolitan Magistrate on the issue of framing charges.

6. A relevant fact which needs to be noted is that another FIR No.523/2005 dated 24.9.205 came to be registered at PS Sadar, Gurgaon under Section 420/506 IPC against the

accused. He was being summoned by the investigating officer to whom said FIR was entrusted for investigation. The accused had to visit Gurgaon if summoned by the investigating officer of FIR No.523/2005. This fact was brought to the notice of this Court. Accordingly, condition imposed upon the accused not to visit Gurgaon was relaxed vide order dated 7.10.2005, but limited as under:-

> "2. .....limited variation is effected to the extent if the applicant has to respond to a police summons during investigation in FIR No.523/2005, petitioner would be permitted to enter the territorial jurisdiction of District Gurgaon, Haryana but before entering he would inform the IO of the present case of his intended visit to Gurgaon to appear before the police in response to the summons, if any issued."

7. Seeking cancellation of the bail it is alleged against the accused that:-

(a) he contacted Somesh Grover, Tarun Gera and Archit Garg being faculty members of Shri Gobind Tricentinary Dental College and Research Institute and exhorted them to leave the institute.

(b) he contacted one Rajesh Nayyar, a prosecution witness not only by himself but even through his alleged henchman Mahipal. It is alleged that Rajesh Nayyar was extended threats not to cooperate with the prosecution.

(c) he entered Gurgaon not in relation to any summons by the investigating officer of FIR No.523/2005, thus, he violated the condition imposed while granting the interim bail.

(d) he contacted employees of Bank of Baroda, Paharganj Branch, in yet another violation of the terms imposed granting interim bail.

8. To make good the submissions it is urged that mobile telephone No.9811309505 admittedly belongs to one Anil Manchanda. That mobile telephone No.9810092002 belongs to Rajesh Nayyar, a witness of the prosecution. Relying upon the telephone record of the mobile telephone number of Rajesh Nayyar it is urged that a call of 269 seconds duration was made from the mobile telephone of Anil Manchanda. Status report filed by the Assistant Commissioner of Police on 5.9.2006 was relied upon. The said status report is to the effect that Anil Manchanda admitted that Rajesh Berry i.e. the accused used his mobile telephone to contact Rajiv Nayyar.

9. The said status report further brings out that Mahipal Singh, the subscriber of mobile telephone No.9312644032 admitted contacting Rajesh Nayyar at the asking of the accused. According to the status report, Mahipal Singh stated

that the accused assured Mahipal Singh that money owed to Mahipal Singh would be returned by him if Mahipal Singh made Rajesh Nayyar to withdraw supporting the case of the prosecution.

10. Pertaining to the 3 faculty members, telephone calls stand recorded on their mobile telephone Nos.9891042550, 9818024018 and 9811252983 from a land-line number 65108503 (previous number 55108503), subscriber whereof is of Berry Educational Trust, 53, Babar Road, Bengali Market. From this very telephone number, calls have been made to Bank of Baroda, Paharganj on telephone No.23672201 on 6.1.2006 and 27.6.2006.

11. Status report submitted on 17.11.2006 by Pradeep Kumar, Inspector, Anti Forgery Section, Crime Branch, Delhi Police was relied upon by learned counsel for the petitioners.

12. Lastly, a tape recorded conversation purporting to be a record of the conversation held between Rajiv Nayyar and the accused, authenticity where is stated to have been established by the voice analysis report dated 4.9.2006 has been relied upon.

13. The said report is to the effect that comparison of the sample voice of the accused matches with the voice on the tape recorded cassette and alleged to be that of the accused.

14. Learned counsel for the accused did not dispute that the accused contacted Rajesh Nayyar as also the 3 faculty member, viz., Somesh Grover, Tarun Gera and Archit Garg. Learned counsel also did not dispute that the accused had met Mahipal who in turn had contacted Rajesh Nayyar. Learned counsel also did not dispute that the accused contacted employees of Bank of Baroda, Paharganj Branch. But gave an explanation.

15. Learned counsel submitted that the purpose of admitting the accused to interim bail was to enable him to have a meaningful interaction with the complainant to sort out the civil dispute which centered around the money entrusted to the accused and utilized by him in relation to the affairs of the Dental College. Counsel urged that Mahipal and Rajesh Nayyar had financial dealings with the said college and how else could the accused sort out the issue without contacting all those persons to whom he had paid money on behalf of the trust managing the college or with whom the college or the trust which had established the college had commercial dealings.

16. Similarly, with reference to the calls made by the accused at Bank of Baroda, Paharganj, counsel urged that the trust which had established the college was maintaining an account with said branch and how certain cheques which were

pre-signed by the complainant were utilized by the accused needed clarification which could be given by the accused only after seeking clarification from the employees of the bank.

17. Explaining the calls made to the faculty members of the college, learned counsel stated that the accused was suffering from teeth ailment and had been under treatment from the faculty members of the college and since teeth ailment continued, accused contacted the faculty members to seek opinion.

18. To appreciate the rival contentions, I may briefly note that the allegations in the FIR against the accused are fairly serious and if established would show falsification of the record and even tampering in the record of the Bank. Under normal circumstances I would not have made a reference to the gravity of the allegations constituting the FIR for the reason while considering cancellation of a bail wholly different issues arise vis-a-vis when consideration is whether or not to admit the accused to bail. It would be impermissible for me to cancel the bail by considering the gravity of the allegations constituting the FIR. Indeed, as observed in the opinion reported as (2001) 6 SCC 338, *Puran vs. Ram Bilas & Anr.*, one cogent ground to cancel a bail would be if it is established that the accused was violating the conditions imposed while

admitting the accused to bail.

19. I also seek guidance from the decision of the Supreme Court reported as (1995) 1 SCC 349, *Dolat Ram vs. State of Haryana* wherein it was observed that cogent and overwhelming circumstances are necessary for an order directing the cancellation of a bail already granted.

20. Generally speaking, albeit being illustrative and not exhaustive, ground for cancellation of a bail would encompass interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. Satisfaction of the court of the possibility of the accused absconding is yet another reason justifying cancellation of bail.

21. Bail once granted, ordinarily would not be cancelled unless supervening circumstances render liable to cancel the order granting bail.

22. That the accused was specifically prohibited from entering Gurgaon save and except when summoned by the investigating officer of FIR No.523/2005 is not in dispute. That the accused entered the territory of Gurgaon even when not summoned by the investigating officer in said FIR is also not in dispute. Further, the accused admits having contacted Rajesh

Nayyar as also the faculty members. It is also not in dispute that it was a term of the interim bail that the accused would not contact any faculty member of the dental college and would not contact any witness of the prosecution is also not in dispute.

23. The explanation for contacting the faculty members given by the accused is that he contacted them in relation to his continuing teeth problem is prima facie belied by the report dated 17.11.2006 of the inspector from the crime branch which records that 3 faculty members informed him that the accused contacted them and impressed upon them to leave the faculty.

24. Explanation of the accused to contact Rajesh Nayyar who had contractual dealings with the trust which had established the college as also the college appears to be attractive inasmuch as it sounds logical as to how would the accused sort out the issue with the complainant without the involvement of third parties who had dealt with the trust and the college established by the trust.

25. But what leans heavily against the accused is the transcript of the conversation which he had with Rajesh Nayyar, prima facie, authenticity whereof is established from the report dated 4.9.2006 submitted by the Central Forensic Science Laboratory. The conversation reveals that the accused had tried to influence and win over Rajesh Nayyar.

26. The submission made by learned counsel for the accused with reference to the talks between the accused and Rajesh Nayyar may also be noted. It was urged that as per supplementary challan filed, Rajesh Nayyar has been impleaded as a co-accused. It was urged that Rajesh Nayyar has ceased to be a witness of the prosecution.

27. May be so, but when the talks took place between the accused and Rajesh Nayyar, the latter was yet to be impleaded, as per supplementary challan, as a co-accused.

28. The accused has not denied contacting the employees of Bank of Baroda. We did not have on record what talk took place between the accused and the employees of Bank of Baroda.

29. It is in this reference that I had briefly noted herein above the gravement of the allegations against the accused in the FIR. Reason why accused was prohibited from speaking to any employee of Bank of Baroda, Paharganj Branch was the suspect role of some of the employees of Bank of Baroda who cleared for payments certain cheques which had interpolations and were presented by the accused. By contacting employees of Bank of Baroda the accused could have influenced the investigation or the deposition by witnesses of Bank of Baroda. It is in the context of these allegations against the accused that

his contacting employees of Bank of Baroda needs to be appreciated with reference to the issue whether it constitutes a relevant circumstance to cancel the bail.

30. In my opinion, it does. Based on the possible testimony of the witnesses from Bank of Baroda it was a term of grant of bail that the accused would not contact any employee of Bank of Baroda, Paharganj Branch.

31. It is not a case of single or a trivial violation of the conditions imposed while granting interim bail to the accused. Virtually every limitation imposed upon the accused while admitting him to interim bail has been violated with impunity. Faculty members of the college are being coerced and influenced to leave the college. Witnesses of the prosecution are being contacted, induced or being threatened in a subtle manner. Employees of Bank of Baroda are being contacted. Service of third party i.e. Mahipal to influence Rajesh Nayyar have been utilized.

32. A subtle attempt was made by learned counsel for the accused to paint the complainant in black colour. It was stated that a committee presided over by a retired Judge of Punjab and Haryana High Court had indicted the complainant of charging capitation fee from the students.

33. If the conduct of the complainant vis-a-vis the affairs

of the college is not above board I see no relevance thereof pertaining to the issue which I am deciding, viz, whether interim bail granted to the accused needs to be cancelled.

34. Noting the conduct of the accused and that there is sufficient material where from it could be gathered that the accused has violated, with impunity, terms whereupon he was admitted to interim bail, I allow Crl.M.C. No.2415/2006 and cancel/revoke the interim bail granted to the accused.

35. However, I suspend operation of the present order for a period of 2 weeks.

36. Since main matter has been disposed of, interim pending applications, if any, stand disposed of as infructuous.

37. Copy of this order be supplied dasti to learned counsel for the petitioner and the complainant.

August 13, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE